

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

IN RE: IBM ARBITRATION
AGREEMENT LITIGATION

No. 1:21-CV-6296-JMF

**NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF
DEFENDANT INTERNATIONAL BUSINESS MACHINES CORPORATION'S
12(B)(6) MOTION TO DISMISS**

In support of its pending Motion to Dismiss (Dkt. 47), and in opposition to Plaintiffs' pending Motion for Summary Judgment (Dkt. 27), Defendant International Business Machines Corporation submits this Notice of Supplemental Authority regarding the May 27, 2022, Order of the United States District Court for the Northern District of Georgia in *Smith v. International Business Machines Corp.*, No. 1:21-CV-03856-JPB, 2022 WL 1720140 (N.D. Ga. May 27, 2022). *Smith* is a vacatur action involving the same arbitration agreement at issue here, where the plaintiff is represented by the same counsel as Plaintiffs. The *Smith* decision is relevant to Plaintiffs' argument that the arbitration agreement's timing provision is invalid because it does not allow for piggybacking, and to Plaintiffs' reliance on *Thompson v. Fresh Products, LLC*, 985 F.3d 509 (6th Cir. 2021). *See Smith*, 2022 WL 1720140, at *5-7.

In pertinent part, the *Smith* court found that *Rusis v. International Business Machines Corp.* is "persuasive" and the "the closest case on point," because it recognized that "the piggybacking doctrine is wholly inapplicable in the arbitration context," since "employees who wished to pursue ADEA claims in arbitration pursuant to IBM's separation agreements were not required to file a charge of discrimination with the EEOC." *Smith*, 2022 WL 1720140, at *6

(quoting *Rusis*, 529 F. Supp. 3d 178, 192 n.4 (S.D.N.Y. 2021)). The *Smith* court also rejected the plaintiff's assertion "that denying her the use of the single-filing rule is tantamount to denying her a substantive right under the ADEA." *Smith*, 2022 WL 1720140, at *6 n.8. The court noted that *Thompson* is not on point because it did "not concern arbitration or the FAA," and the court also pointed out that "Plaintiff offers no binding legal authority for the proposition that the [ADEA's] filing deadlines are somehow substantive in nature" as would be required to make them non-waivable in an arbitration agreement covered by the FAA. *Id.* A copy of the *Smith* Order is attached to this Notice.

Dated: June 9, 2022

Respectfully submitted,

s/ Matthew W. Lampe

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CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2022, a true and accurate copy of the foregoing was filed via this Court's CM/ECF system.

/s/ Matthew W. Lampe
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